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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 JEROME CEASAR ALVERTO,

7 Plaintiff,

8 v.

9 DEPARTMENT OF CORRECTIONS, C/O  
10 FINCH, C/O PERCIFIELD, C/O  
11 GRIJALVA, SGT. C. ROOP, HERBERT C.  
12 PENROSE, MICHAEL ESTES, KRISTI  
13 ENTROP, DR. JUGUILON, STEPHEN  
14 SINCLAIR, RAYMOND BUCHMANN, C/O  
15 ADAMIRE, RON FRAKER, ROB  
16 JACKSON, COUNSELOR WALKER,  
KURT GRUBB, C/O DELEON, C/O  
PALMER, JASON ROMERO, ADELE  
WILLIAMS, BRYAN MCGARVIE,  
DARREN HEAWARD, DENISE LARSON,  
LT. TOM TABER, JASON ULRICH, and  
STATE OF WASHINGTON,

17 Defendants.

No. C11-5572 RJB/KLS

ORDER DENYING PLAINTIFF'S  
MOTION TO APPOINT COUNSEL

18 This civil rights action has been referred to United States Magistrate Judge Karen L.  
19 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is  
20 Plaintiff's motion for the appointment of counsel. ECF No. 7. Having carefully reviewed  
21 Plaintiff's motion, and balance of the record, the Court finds, for the reasons stated below, that  
22 Plaintiff's motion should be denied.  
23

24 **DISCUSSION**

25 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*  
26 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*

1 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
2 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may  
3 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
4 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
5 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional  
6 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]  
7 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
8 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
9 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
10 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
11 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
12 1101, 1103 (9<sup>th</sup> Cir. 2004).

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14 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
15 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
16 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
17 facts during litigation. But, if all that was required to establish the complexity of the relevant  
18 issues was a demonstration of the need for development of further facts, then practically all cases  
19 would involve complex legal issues. *Id.*

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21 Plaintiff states that he requires the appointment of counsel because his access to the  
22 library is limited, he is not an attorney and has no legal training or education, and he believes the  
23 facts of his case will be strongly disputed. ECF No. 7-1, p. 2. Plaintiff filed his complaint *pro se*  
24 and has demonstrated an adequate ability to articulate his claims *pro se*. Plaintiff claims that he  
25 was sexually assaulted by a prison guard. This case does not involve complex facts or law.  
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1 The court finds no exceptional circumstances in this case. While Plaintiff may not have  
2 vast resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding  
3 investigation and discovery are also not exceptional factors, but are the type of difficulties  
4 encountered by many *pro se* litigants. There are also numerous avenues of discovery available to  
5 the parties through the Federal Rules of Civil Procedure during the litigation process.  
6 Moreover, Plaintiff has not shown a likelihood of success on the merits.  
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8 Accordingly, Plaintiff's motion to appoint counsel (ECF No. 7) is **DENIED**. The Clerk is  
9 directed to send copies of this Order to Plaintiff.

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11 **DATED** this 30th day of August, 2011.

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13 Karen L. Strombom  
14 United States Magistrate Judge  
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